

No. 1 of 1992.

Electoral Development Authority Act 1992.

Certified on: 25/2/1992.

INDEPENDENT STATE OF PAPUA NEW GUINEA.



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SCHEDULE 1 – .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Electoral Development Authority Act 1992,

Being an Act to establish Electoral Development Authorities and to define their powers and functions, and for related purposes.

MADE by the National Parliament to come into operation in accordance with a notice published in the National Gazette by the Head of State, acting on the advice of the Minister.

PART 1. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (qualified rights) of the *Constitution*, namely –

- (a) the right to freedom arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to privacy conferred by Section 49 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public welfare.

(2) For the purposes of Section 31 (legislative powers of the National Parliament) of the Organic Law on Provincial Government, it is hereby declared that this law relates to a matter of national interest.

2. INTERPRETATION.

In this Act, unless the contrary intention appears –

“**Authority**” means an Electoral Development Authority established under Section 3;

“**Board**” means the Board of Directors of an Electoral Development Authority established under Section 9;

“contractor” means a person or corporation who or which has entered into a contract with an Authority to carry out any work for the Authority;

“Council” means a Council established under the Local Government Act (Chapter 57) and includes a local level or community government established under a provincial law;

“electorate”, in relation to an Authority, means the area in and for which the Authority is established under Section 3;

“member” means a member of the Board;

“Officer-in-charge of the electorate” means the government officer appointed by the person appointed under Section 50 of the *Organic Law on Provincial Government* as the officer responsible for the district in matters of public administration.

PART 2. – ELECTORAL DEVELOPMENT AUTHORITY.

3. ESTABLISHMENT OF AUTHORITY.

The Minister may, by notice in the National Gazette, establish an Electoral Development Authority in and for the area specified in the notice.

4. INCORPORATION OF AUTHORITY.

(1) An Authority known as an Electoral Development Authority may be established under this Act.

(2) An Authority, when declared by the Minister –

- (a) is a corporation with perpetual succession; and
- (b) shall have a common seal; and
- (c) may acquire, hold, lease, mortgage or dispose of property; and
- (d) may sue or be sued in its corporate name; and

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of an Authority affixed to a document and shall presume that it was so duly affixed.

5. OBJECTS OF THE ACT AND AUTHORITIES.

The objects and purposes of the Act and Authorities are –

- (a) to bring government funding and resources directly to the people within the electorate; and
- (b) to enable elected leaders of the people to determine priorities for allocation of funding and to oversee management control and distribution of resources so as to accelerate improvement of the standard of living of the people; and
- (c) to ensure that resources are equitably distributed in the electorate; and
- (d) to act as a vehicle for co-ordination of social, economic and cultural activities in the electorate; and
- (e) to encourage co-operation among both the government and non-government agencies or persons engaging in development activities in the electorate.

6. AUTHORITY ELECTORATES.

(1) In principle, an area of an Authority shall comprise one open electorate.

(2) Notwithstanding Subsection (1) the Minister may establish two, but not more than three Authorities in any one open electorate.

7. STAFF ON AN AUTHORITY.

(1) The Executive Officer of an Authority shall, ex-officio, be responsible for the day to day operations of the Authority and, subject to Subsections (2) and (3), the Authority shall not employ any other person.

(2) Where it is necessary to do so, an Authority –

- (a) shall utilise existing manpower resources, governmental or private, as are available at the district level in liaison with the Executive Officer; and
- (b) may employ other persons on secondment on a temporary basis, provided that no expenses are incurred by the Authority in respect of such utilisation or secondment, as the case may be.

(3) Notwithstanding anything in this section, an Authority may –

- (a) without derogating anything from Section 12, where, in a particular case of a contract, it appears to the Authority to be the most efficient manner of completing the contract –authorize the Executive Officer to carry out the contract on a day –labour basis; or
- (b) employ volunteers with special skills from abroad on such terms and conditions as are prevailing at the time.

8. HEAD OFFICE.

(1) An Authority shall have an office which, for the purposes of this Act and the Authority, shall be referred to as the ‘Authority Officer’ and –

- (a) in which all the records and documents of the Authority shall be kept; and
- (b) to which all the correspondence shall be addressed; and
- (c) subject to any direction of the Board, in which all the meetings of the Board shall be held.

(2) The Chairman of the Board shall –

- (a) on a sign board of convenient size and height caused to be erected by him in a convenient location; and
- (b) by notice in the Provincial Gazette, notify the public of the location and address of the Authority Office.

9. BOARD OF DIRECTORS OF AN AUTHORITY.

(1) There shall be a Board of Directors of an Authority.

(2) The Board shall be constituted as provided in Section 15.

10. POWERS AND FUNCTIONS OF AN AUTHORITY.

(1) Subject to this Act and any other law, the powers and functions of an Authority are as laid down under this Act or regulations.

(2) An Authority's powers and functions are, subject to Subsection (1) –

- (a) to assist in the administration and management of its electorate; and
- (b) to promote social, economic and cultural welfare of the people through activities such as sports, shows, musical or cultural activities, spiritual development, construction of roads, bridges, wharves, airstrips, buildings, housing, savings clubs, mini power supply, water and telephone services, nutrition and literacy, integral human development, ecological and environmental management, maintenance of law and order, and to generally implement the objectives of this Act.

(3) Without limiting the generality of Subsection (1) the powers and functions of an Authority are –

- (a) take such action as it deems desirable for the maintenance of assets as are providing services to the people of the electorate; and
- (b) acquire land or buildings by transfer, lease or purchase of public, social or sporting purposes; and
- (c) lease, sublease or sell or otherwise dispose of or deal with land or buildings for such sums and rentals; and
- (d) where funds have been made available to it for any purpose by any government, organization or person –make grants or other payments as specified by the donors concerned; and
- (e) carry out any works for the benefits of the people in the district; and
- (f) provide, or co-operate with any department of the National Government or a provincial government or other body in providing any public or social service; and
- (g) subject to Sections 12 and 13, do all such other things as seem to it necessary or desirable for performing its powers and functions.

11. POLICIES OF AN AUTHORITY.

(1) All policies, proposals, programmes and estimates of an Authority shall be written up and submitted to the Minister, with copies to the Speaker for presentation to Parliament.

(2) Subject to Subsection (3), all works carried out or proposed to be carried out by an Authority shall be by contract let through a process of public tender as prescribed in the Schedule.

(3) Where the Board is of the opinion that there are no tenders acceptable to it, may authorize the Executive Officer to carry out works concerned with casual labour or labour hired on a daily basis.

12. RESTRICTIONS ON CERTAIN ACTIVITIES.

(1) Except by regulations made by the Minister, Authorities under this Act have no legislative or judicial powers.

(2) Except as provided under this Act or any other law, Authorities have no power to direct or control public servants in the electorate but this does not prevent Authorities from making recommendations to provincial or local level government.

(3) All acts, omission, contracts, agreements or commitments by an Authority are not binding on the State unless previously approved by the Minister.

13. AGENCY FUNCTIONS.

An Authority may perform duties or responsibilities on behalf of the National, Provincial or Local Level Government, an agency or instrumentality or a public authority under a contract on such terms and conditions not inconsistent with this Act or any other law.

PART 3. – THE BOARD.

14. CONSTITUTION OF THE BOARD.

The Board shall consist of, ex-officio –

- (a) the Member of the National Parliament whose open electorate comprises a district as provided in Section 6; and
- (b) the Member of the National Parliament representing the Province of the Authority ;and
- (c) the Presidents of each Council in the electorate; and
- (d) the officer-in-charge of the electorate; and
- (e) a member to represent each of the following groups –
 - (i) Youth; and
 - (ii) Women; and
 - (iii) the Churches,

appointed by the Chairman of the Board

15. TERMINATION OF APPOINTMENT.

Subject to this Act, a member of the Board –

- (a) may by written notice to the Chairman resign from office; or
- (b) may be removed form Office by the Chairman, acting on advice on ground of incapacity or proven misbehaviour; or
- (c) upon termination by the Chairman of the direction; or
- (d) the Chairman shall cease to be a member of the Board on his ceasing to be a Member of Parliament; or
- (e) if he is bankrupt; or
- (f) if he is absent, except on leave granted by the Chairman, from three consecutive meetings of the Board; or
- (g) if he is of unsound mind under the *Public Health Act 1973*; or
- (h) if he is convicted of an indictable offence and is sentenced to a term of imprisonment in excess of nine months.

16. CHAIRMAN AND DEPUTY CHAIRMAN OF THE BOARD.

The member of the Board holding office by virtue of Section 14(a) shall be the Chairman, and the member of the Board holding by virtue of Section 14(b) shall be the Deputy Chairman, of the Board.

17. DEPUTIES.

(1) For each member of the Board, the Board shall appoint a deputy member nominated by the member concerned to act during the illness or absence of the member.

(2) For the purposes of Subsection (1), each member shall nominate a person in writing addressed to the executive officer.

(3) A person shall not be a deputy if –

- (a) he is a contractor to the Authority; or
- (b) he is an undischarged bankrupt.

18. DISCLOSURE OF INTERESTS.

(1) Any member with any interest in any transaction under discussion for a decision, shall disclose his interest and the nature of the interest at the first meeting at which he is present after he is aware of the relevant facts.

(2) Such disclosure shall be recorded and the member –

- (a) shall not take part in any deliberation or decision; and
- (b) shall be disregarded for the purpose of a quorum for decision.

19. FUNCTIONS OF THE BOARD.

The Board is responsible for the administration of this Act.

20. MEETINGS OF THE BOARD.

(1) The Board shall meet at such times and places as the Board determines, or, in the absence of a determination by the Board, as the Chairman or Deputy Chairman acting in his place determines, but it shall meet at least once in each period of three calendar months.

(2) Notwithstanding that the time and place have been determined under Subsection (1), a meeting of the Board shall be called by the Chairman or the Deputy Chairman acting in his place if the Minister so directs or a number of members of the Board, being a number not less than three, so request in writing.

(3) Notice of a meeting shall be given personally, or by post, by the Chairman or, at his direction by the Executive Officer, to each member at least seven days before the meetings is to be held.

(4) Where a direction or request is received for a meeting under Subsection (2), the Chairman or the Deputy Chairman acting in his place shall call the meeting within 14 days of the receipt of the direction or request.

(5) At a meeting of the Board –

- (a) three members, of whom the Chairman or the Deputy Chairman is one, are a quorum; and

- (b) all matters before the meeting shall be determined in accordance with a majority of the votes; and
 - (c) the Chairman has a deliberative and, in the event of an equality of votes, a casting vote.
- (6) Subject to this Act, the Board may otherwise determine its own procedures.

21. EXECUTIVE OFFICER TO THE BOARD.

The member of the Board appointed by virtue of Section 15(c) shall be the Executive Officer to the Board.

22. DELEGATION.

The Board may delegate, by instrument under its seal, to any person or body any of its powers and functions under this Act (except this power of delegation).

23. REMUNERATION OF MEMBERS.

Only the Members appointed by virtue of Section 14(d) may be paid such remuneration (if any) as the Minister determines from time to time by notice in the National Gazette.

PART 4. – FINANCE.**24. SOURCES OF FINANCE.**

The sources of finance for an Authority shall be –

- (a) grants and aids (if any) from the National Government and the respective provincial government; and
- (b) contributions or donations from private persons and bodies (if any); and
- (c) earnings from its property dealings; and
- (d) fees for work carried out by it on a contractual or agency basis for a government or a private person or body.

25. BANK ACCOUNTS.

An Authority shall open and maintain such Bank accounts as are necessary and approved by the Board for the exercise and performance of its powers and functions, and the Authority shall pay into such account all monies received under Section 24.

26. PAYMENTS OUT OF THE ACCOUNTS.

From monies standing to the credit of the accounts in Section 25 the Authority shall pay –

- (a) the costs, charges and expenses incurred by the Authority in the performance of its powers and functions under this Act; and
- (b) the remuneration of members under Section 23; and
- (c) subject to the approval of the Board, any amount that the Authority has contracted to pay a contractor; and
- (d) any other payment that the Authority is authorized or required to make under this Act or any other Law.

27. ANNUAL ESTIMATES.

(1) An Authority shall, not later than the 1st day of December in each year, submit to the Minister estimates of its receipts and expenditure for the next fiscal year and may, if it is necessary to do so, submit other supplementary or revised estimates for that year as the Authority considers necessary.

(2) Where the Minister is satisfied that the estimates or revised or supplementary estimates are –

- (a) not unreasonable; or
- (b) within the powers of the Authority under this Act; and

- (c) are likely to be met from funding available to the Authority, the Minister shall, within 30 days after the receipt of the estimates, certify the estimates of the Authority.

(3) Where the Minister is not satisfied with the matters referred to in Subsection (2) he shall, by notice in writing to the Authority and with the reasons stated therein, refuse to certify the estimates in whole or part, and shall immediately send the notice to the Authority.

(4) If the Minister has not refused his certification within the period specified in Subsection (2), he shall be deemed to have certified the estimates.

(5) Where the Minister has withheld his certification of any estimates, the Authority shall not, without the consent of the Minister, incur any expenditure, collect any revenue or commence or carry out any work in respect of the estimates for which certification has been withheld.

28. FINANCIAL INSTRUCTIONS.

For the proper management and control of the finances of Authorities, the Minister may, from time to time and subject to this Act, issue written instructions not inconsistent with this Act.

29. AUDIT.

(1) The Minister shall make arrangements for the inspection and auditing of the accounts and records of an Authority by an auditor.

(2) The auditor shall, from time to time, inspect and audit the accounts and records of the financial transactions of the Authority for which he is so appointed, and shall draw the attention of the Board and the Minister to any irregularity revealed by the inspection and audit that, in the opinion of the auditor, is of sufficient importance to justify his so doing.

(3) The auditor shall, at least once in each calendar year, make a report to the Board and the Minister on the results of the audit carried out under Subsection (2).

(4) The auditor is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Authority relating to the receipt or payment of monies or the acquisition, custody or disposal of assets of the authority.

(5) The auditor may make copies of or take extracts from accounts, records, documents or papers referred to in Subsection (4).

(6) The auditor may require the Board or any other person to furnish him with such information in its or his possession as the auditor thinks necessary for the purposes of an audit.

(7) Any person who without lawful excuse fails to comply with a requirement under Subsection (6) is guilty of an offence.

Penalty: A fine not exceeding K1, 000.00

(8) In this section “the auditor” means an auditor appointed under Subsection (1) for the purposes of this section.

PART 5. – SUSPENSION.

30. SUSPENSION.

(1) Where in the opinion of the Minister –

(a) the business of an Authority is being –

(i) negligently, inefficiently or badly conducted; or

(ii) so conducted as not to be for the welfare of the district or of people in the district; or

(b) the Authority is not properly carrying out its duties imposed under this Act or any other law,

the Minister may, by written notice addressed to the Chairman of the Board, suspend the Authority by suspending the Board for, subject to Subsection (2), such period as the Minister deems necessary to take measures to correct the causes of the suspension.

(2) Unless a suspension under Subsection (1) is previously confirmed, varied or revoked by the Minister, it lapses at the end of one month.

31. EFFECT OF SUSPENSION.

The suspension of an Authority under Section 30 does not affect –

(a) any right, privilege, obligation or liability acquired, accrued or incurred by the Authority; or

(b) any investigation, legal proceeding or remedy in respect of a suspended power or function; or

(c) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability,

and any such right, privilege, obligation or liability may, subject to this Act, be carried on or enforced as if the suspension had not taken place.

32. APPOINTMENT OF A MANAGER.

(1) Where an Authority is suspended under Section 30 the Minister shall appoint a person to be the Manager for the Authority.

(2) Subject to any directions of the Minister, a Manager –

(a) has and may exercise on behalf of the Authority such of the suspended powers and functions of the Authority as are specified by the Minister by instrument; and

(b) has such other powers, functions, duties and responsibilities as are prescribed.

PART 6. – MISCELLANEOUS.

33. REGULATIONS.

The Head of State may, acting on advice, make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be made or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

SCHEDULE 1 – .

Section 11(2)

Sch. 1.1. Calling of Tenders.

(1) Where the Authority has approved any work under Section 11(2) it shall invite tenderers by notice which shall –

- (a) contain a description of the matter or thing in respect of which the tender is invited; and
- (b) require a tenderer to endorse the envelope containing his tender with a reference to the matter or thing in respect of which the tender is invited; and
- (c) fix a closing time and date for tenders; and
- (d) be published –
 - (i) in the Provincial Gazette; or
 - (ii) in such other manner as the Board thinks necessary to bring it to the attention of likely tenderers.

(2) The conditions of the tender and, where applicable, detailed specifications and plans of the matter or thing in respect of which the tender is invited shall be made available on demand to a tenderer.

(3) A tender shall be lodged unopened in a Tender Box, which shall –

- (a) be immovable; and
- (b) have two separate locks, the keys to which shall be held one by a nominee of the Board and one by the Executive Officer.

Sch. 1.2. Opening of Tenders.

(1) On the day and at the time fixed for the closing of tenders the key holders and the Executive Officer shall –

- (a) open the Tender Box; and
- (b) remove all envelopes endorsed with a reference to the matter or thing in respect of which tenders are being closed; and
- (c) re-lock the Tender Box.

(2) The key holders and the Executive Officer shall open the tenders removed from the Tender Box without any contact with any other person.

(3) As each tender is opened, each envelope and each page shall be numbered consecutively, dated and initialled by the Executive Officer and the other key holder.

(4) AS each tender is opened the Executive Officer shall record in a bound book kept for the purpose and called the “Tenders Register” details of each tender including –

- (a) the name of the tenderer; and
- (b) the price tendered; and
- (c) details of any informality in the tender; and
- (d) any other matters pertinent in the tender;

(5) When details of each tender have been recorded in the Register the key holder and the Executive Officer shall check all recorded details for accuracy, amend as necessary, and initial the entries.

Sch. 1.3.Late or informal Tenders.

(1) An informal or late tender shall be referred to the Board.

(2) Where the Board is satisfied that an informal tender complies in all material respects with the notice of the tender it may direct that the tender be considered with other tenders.

(3) Where the Board is satisfied that the tender does not comply in all material respects with the notice of tender it shall direct that the tender be rejected.

(4) Where the Board is satisfied that the late lodging was through circumstances beyond the control of the tenderer it may direct that the tender be considered with other tenders.

Sch. 1.4.Consideration of Tenders.

(1) The Executive Officer shall prepare details of tender in the form of a schedule for the Chairman to present to the Board.

(2) The Board may co-opt or seek advice of persons with specialised knowledge to assist the Board in its consideration of tenders.

(3) In examining a tender the Board shall give consideration to the financial capacity, experience in carrying out similar work and the integrity of the tenderers and such other matters as the Board considers relevant.

(4) if after consideration of tenders a tender appears satisfactory the Board may accept that tender.

(5) Where a tender accepted by the Board is other than –

- (a) in the case of tenders for disposal of property –the highest tender; and
- (b) in any other case –the lowest tender,

the Board shall publish the reasons for its acceptance.

Sch. 1.5.Notice of successful tender.

After the notice of the acceptance of his tender has been communicated to the successful tenderer the Chairman of the Board shall –

- (a) by notice in writing, advise all other unsuccessful tenderers; and

- (b) publish details of tenders in the Provincial Gazette; and
- (c) place details of tenders on notice board at the Office of the authority, the Electoral Officer and each Council Chamber in the Electorate.

Office of Legislative Counsel, PNG